

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 17-00126-AG (KESx)	Date	March 22, 2017
Title	COURTHOUSE NEWS SERVICE v. DAVID YAMASAKI		

Present: The
Honorable

ANDREW J. GUILFORD

Lisa Bredahl

Not Present

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Proceedings: [IN CHAMBERS] ORDER REGARDING ADDITIONAL BRIEFING

Freedom of the press, guaranteed by the First Amendment to the U.S. Constitution, is a fundamental personal right and liberty provided by the Founders. *See Thornhill v. State of Alabama*, 310 U.S. 88, 95 (1940). Today, as always, the press plays a vital role in exposing Americans to realities and creating a discourse that's essential to free government. Interwoven in that national discourse, is a tension created by balancing First Amendment rights with other interests and concerns.

Plaintiff Courthouse News Service ("CNS") believes its First Amendment rights have been violated. CNS has sued Defendant David Yamasaki in his official capacity as Court Executive Officer/Clerk of the Orange County Superior Court ("OCSC"), alleging that the OCSC unconstitutionally delays access to newly e-filed civil complaints. CNS seeks a preliminary injunction to enjoin OCSC "from denying CNS's right of timely access to new unlimited complaints." (Dkt. No. 11-1 at 32.) The Orange County Bar Association, Family Violence Appellate Project, Legal Aid of Orange County, Public Law Center, and Veterans Legal Institute have filed an *amici curiae* brief, supporting Defendant's opposition.

The Court held a lengthy hearing on this matter on March 20, 2017. During that hearing, the

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Court offered the parties a chance to get to trial quickly so the record could be more fully developed and the parties would have cross examination opportunities. But CNS appeared more interested in a quick appeal than a quick trial. Nevertheless, this Court wishes to further develop the record before ruling on CNS's preliminary injunction motion.

The First Amendment protects and allows the Fourth Estate to thrive as "the vigilant guardian of the rights of the ordinary citizen." British Prime Minister Winston Churchill, Iron Curtain Speech (March 5, 1946, at Fulton, Missouri). CNS seems to wrap its claim in the august values of the First Amendment. (*See e.g.*, Dkt. No. 11-1 at 24:1–10.) But at the hearing, there was some indication that such august First Amendment values might be only a minor factor here, if a factor at all. Instead, there were some indications that the overriding focus of CNS subscriptions is to allow law firms to chase after new business. While there's some value in such activities within our free market, First Amendment concerns may be diminished if that's the case. The Court asked for further information about this issue at the hearing, but facts and law were surprisingly not forthcoming.

Therefore, the Court **ORDERS** CNS to provide further briefing on the following by **March 31, 2017**:

1. In Orange County, California, and nationwide, what is the distribution of CNS subscribers among law firms and lawyers, news agencies, law schools, libraries, and any other categories?
2. What profits does CNS make from each of the categories just listed?
3. What news agencies serving Orange Coutny are subscribers?
4. What law firms with an office in Orange County are subscribers?
5. If available, what are some stories locally or beyond involving lives saved or demonstrating other First Amendment values?

Both parties are then invited to provide further briefing by **April 14, 2017**, discussing whether or not the facts provided on March 31 have any relevance at all in the legal analysis for the requested preliminary injunction.

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